IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 9864 of 2007(Y)

EP.21/2004 of MUNSIFF COURT,KATTAPPANA
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PETITIONER:

K.G.KRISHNAN KUTTY, S/O LATE GOPALAN,
AGED 60 YEARS, KODITHOTTATHIL HOUSE,
KATTAPPANA VILLAGE, VELLAYAMKUDY KARA.

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS:

K.M.VARKEY, S/O MATHAI,
AGED 63 YEARS, KOCHUPALLIKUNNAL HOUSE,
AYYAPPANCOIL VILLAGE, MATTUKATTA KARA.

BY ADV. SRI.S.DILEEP (KALLAR)
SRI.NAVEEN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF OBJECTIONS IN EP 21/04.

EXT.P2 TRUE COPY OF THE ORDER DTD.18.1.07 IN EA 74/05 IN EP 21/04.

EXT.P3 TRUE COPY OF THE ORDER DTD.18.1.07 IN EP 21/04.

EXT.P4 TRUE COPY OF JUDGMENT DTD.2.2.07 IN WPC 3361/07.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 9864 OF 2007

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Dated this the 28th day of May, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Exts.P2 and P3. The respondent in the O.P. has obtained a decree in O.S.107/02 and he had filed an application for execution of the same by arresting the decree holder. On the other hand the writ petitioner would contend that he had already moved an application to declare him as an insolvent as IP 1/05 and the said matter is pending before the appropriate Court. Earlier I had the opportunity to consider another petition filed by the same writ petitioner and it was against the decree passed by the Sub Court Kattappana for sale of the property. In that case this Court disposed of the matter; "Therefore, the writ petition is disposed of directing the Sub Judge, Kattappana to dispose of the restoration petition pending before it in I.P.1/05 and not to proceed with the execution of decree in O.S.83/01 till a decision is taken on the restoration application."

2. I am informed that the respondent in the writ petition is also a party in the insolvency petition. It is a settled law that

when an application for declaring a person as insolvent is filed before a Court and there are large number of creditors the law requires equitable distribution of assets and one shall not get priority over the other. Therefore, in the interest of justice it is just and proper that the execution of the decree in O.S. 107/02 is also be deferred till the restoration application in IP 1/05 is considered and disposed of by the Sub Court, Kattappana. Therefore, the writ petition is allowed in the above terms and the executing Court is directed not to issue arrest warrant till a decision is taken in the restoration petition in IP 1/05.

M.N. KRISHNAN, JUDGE.

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